Excess Levy Guideline

(Revised October 2006)

Glen B. Gainer, III
West Virginia State Auditor

Mack E. Parsons
Senior Deputy State Auditor

Ora L. Ash, Director
Local Government Services Division
(304) 627-2415, ext 5114

CLARKSBURG OFFICE
200 West Main Street
Clarksburg, WV 26301

Phone:
(304) 627-2415 or toll free 877-982-9148

Local Government Services Staff:
Joyce Ferrebee, ext. 5208
Karen Drain, ext. 5101

Table of Contents

INTRODUCTION

This Guideline is provided to assist local governments holding excess levy elections. Please note, that the Auditor's Office, upon request, will review your proposed Orders/Ordinances and Sample Ballots. Review of this information by this office is not mandatory; it is a service provided to local governments.

W. Va. Code § 11-8-16 sets forth the required information and format to be used when developing the order or ordinance calling for a special excess levy election. The notice of the excess levy election for the newspaper appears in the same format as the order/ordinance. W. Va. Code § 11-8-17 describes the format for the ballot. The language contained in both of these sections appears in its entirety on pages 7 - 9. Included in this guideline is a sample for a five year levy with a reduced rate provision. Fill in the blank forms have also been included for your convenience.

An excess levy must receive 60% of the votes in favor of the levy for a municipal or county commission levy; and 50% of the votes in favor of the levy for a school board levy.

MAXIMUM EXCESS LEVY RATES

Class Of Property	School	County	Municipal
Class I	22.95¢	7.15¢	6.25¢
Class II	45.90¢	14.30¢	12.50¢
Class III & IV	91.80¢	28.60¢	25.00¢

CONSTITUTIONAL AMENDMENT #2 – NOVEMBER 2002

Passage of Constitutional Amendment No. 2 in November of 2002 caused a very significant change as it relates to the length of time that an excess levy may be in effect. Amendment No. 2 amended article ten of the WV Constitution by adding a new section, designated as section eleven. This section extends the length of time that an excess levy may be in effect from 3 to 5 years for county commissions and municipalities.

ARTICLE X. TAXATION AND FINANCE. § 11. County and municipal excess levy amendment.

"Notwithstanding any other provisions of this Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property by county commissions and municipalities may be increased in any county or municipality, as provided in section one of this article, **for a period not to exceed five years.**

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Equalizing Number of Years of Excess Levies Amendment" and the purpose of the proposed amendment is summarized as follows: **"The purpose of this amendment is to allow county and municipal governments to propose excess levies for the same time periods as boards of education, which is up to five years."**

S.B. 4002 – SEPTEMBER 9, 2005

S.B. 4002 changed the language in W. Va. Code § 11-8-16 to coincide with Constitutional Amendment #2 which extends the length of time that an excess levy may be in effect **from 3 to 5 years** for county commissions and municipalities.

S.B. 4002 also authorizes levying bodies to conduct an excess levy election during a **primary election**.

BALLOT FORMAT:

Generally speaking we have in the past stated that the amount to be raised by the levy is not **"required"** to be placed on the ballot. This is because in reading W. Va. Code § 11-8-17 we do not find any direct language that asks for the amount to be raised by the levy. However, footnote 6 of the Supreme Court's decision in the case of Joan Byrd, et al., v. The Board of Education of Mercer County, **September 1995 Term: No. 22962** footnote #6 states that:

> **"Because the statute which deals specifically with the purpose requirement at issue here is West Virginia Code § 11-8-16, we will refer throughout this opinion to the requirements of the election order, rather than the ballot. Since West Virginia Code § 11-8-17 incorporates by reference the use of the election order language required by West Virginia Code § 11-8-16 as the ballot language, any references in this opinion to the election order requirements similarly apply to the levy ballot."** (Emphasis supplied)

In this case the Supreme Court held that the amount to be raised by the levy for each purpose should be reflected in the election order. Since the footnote states that **"any references in this opinion to the election order requirements similarly apply to the levy ballot"**, we encourage an entity proposing an excess levy to also include the amounts to be raised by the levy for each purpose on the ballot.

REDUCE RATE PROVISION:

Note that the guideline sample includes a provision to reduce the levy rate if there is an increase in assessed value. Property reappraisal generated a concern from many community leaders and taxpayers that special excess levies would generate a surplus or a "windfall" of additional revenue because the levy rate is fixed by the rate stated in the election order. In an effort to address this concern, 5a is presented in the sample as an alternative to establishing a fixed levy rate. This provision is not dictated under W. Va. Code § 11-8-16 and 17. **The provision is optional and may be included at the discretion of the levying body.**

Several levying bodies have chosen to include reduce rate provisions that mimic or are **"in accordance with W. Va. Code § 11-8-6g"**. W. Va. Code § 11-8-6g was in effect for the 1994 and 1995 fiscal years and required the entity to conduct public hearings if the levy rate generated an increase over the previous fiscal year of 4% or more. Please be mindful that if your election orders include a roll back provision **"in accordance with W. Va. Code 11-8-6g"** that the excess levy is subject to the following:

> ". . . where any annual appraisal, triennial appraisal or general valuation of property would produce an assessment that would cause an increase of four percent or more in the

total projected property tax revenues that would be realized were the special levy rates then in effect by the county commission, the municipalities or the county board of education to be imposed, the local levying body shall comply with subsection (b) . . ." (Emphasis Supplied)

Projected tax revenue is defined as the taxes levied prior to any allowances made for delinquencies, exonerations, tax discounts or uncollectible taxes; in other words, the "gross" amount of taxes levied.

And subsection (b) states in part:

". . . (b) Any local levying body projected to realize such increase greater than four percent shall conduct a public hearing no later than the twentieth day of March . . ." (Emphasis Supplied)

". . . An additional appraisal or valuation due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. . . ."

For the purpose of complying with W. Va. Code § 11-8-6g, the entity will use the valuation reported on the "Assessed Valuation for Calculating the Reduced "Rolled Back" Levy Rate Form" as certified by the county assessor.

"Notice of the public hearing and the meeting in which the levy rate shall be on the agenda shall be given at least seven days before the date for each public hearing by the publication of a notice in at least one newspaper of general circulation in such county or municipality: . . . "

". . . a Class IV town or village as defined in section two, article one, chapter eight of this code, in lieu of the publication notice required by this subsection, may post no less than four notices of each public hearing,. . ."

"The notice shall be at least the size of one-eighth page of a standard size newspaper or one-fourth page of a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than twenty-four point. The publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal notices and classified advertisements and shall also be published as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county.

The notice shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

HEARING REGARDING SPECIAL LEVY RATES

The (name of the local levying body) hereby gives notice that the special levy rate imposed by the (local levying body) causes an increase in property tax revenues due to increased valuations.

1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional assessments due to new or improved property, exceeds last year's total assessed value of property by ..... percent.

2. Current Year's Revenue Produced Under Special Levy:

3. Projected Revenue Under Special Levy for Next Tax Year:

4. Revenue Projected from New Property or Improvements: $.....

5. General areas in which new revenue is to be allocated:

A public hearing on the issue of special levy rates will be held on (date and time) at (meeting place). A decision regarding the special levy rate will be made on (date and time) at (meeting place)."

IN SUMMARY:

- An Order or Ordinance must be entered by the Board of Education, County Commission, and Municipal Council calling for a excess levy election. This Order/Ordinance must follow the format outlined under W. Va. Code § 11-8-16 – See Samples

- All excess levies may have a term of up to 5 years;

- Excess levy elections may be conducted at the primary election.

- The format for the Ballot is prescribed under W. Va. Code § 11-8-17. See Samples. In addition to other provisions, the ballot should also include the dollar amount to be raised for each purpose;

- The Notice of the excess levy election mirrors the Order/Ordinance and Sample Ballot; the notice should be published as a Class II-O.

- A reduced rate provision that is stated to be in accordance with W. Va. Code § 11-8-6g require the levying body to:

    1. Conduct a public hearing if the increase in projected revenue is equal to or greater than 4% not later than March 20th; (Note that a hearing must be conducted whether the intent of the levying body is to reduce the rate)

    2. New construction or improvement and newly acquired personal property is not included in calculating the new tax levy rate;

    3. Notice of the public hearing and the notice of date in which the decision regarding the levy rate will be made should be a Class II-0 and an "ad type" notice;

    4. Recommended that the public hearing and meeting in which decision is made regarding the levy rate take place on the same date.

The signed Order, Sample Ballot and Canvass of Votes must be on file with the Auditor's Office prior to March 28th of the year the levy takes effect. This information should be mailed to: WVSAO-Local Government Services, 200 West Main Street, Clarksburg, WV 26301

W. Va. Code § 11-8-16 What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

A local levying body may provide for an election to increase the levies, by entering on its record of proceedings a order setting forth:

(1) The purpose for which additional funds are needed;

(2) The amount for each purpose;

(3) The total amount needed;

(4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;

(5) The proposed additional rate of levy in cents on each class of property;

(6) The proposed number of years, not to exceed **five**, to which the additional levy applies;

(7) The fact that the local levying body will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision the question of the additional levy at either a **primary**, general or special election. If at least sixty percent of the voters cast their ballots in favor of the additional levy, the county commission or municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the county board of education may impose the additional levy: *Provided,* That any additional levy adopted by the voters, including any additional levy adopted prior to the effective date of this section, shall be the actual number of cents per each one hundred dollars of value set forth in the ballot provision, which number shall not exceed

the maximum amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect, unless such rate of additional special levy is reduced in accordance with the provisions of section six-g of this article or otherwise changed in accordance with the applicable ballot provisions. For county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For county boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties.

Levies authorized by this section shall not continue for more than five years without resubmission to the voters.

Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of the bonds shall not extend beyond the period of the increased levy.

Insofar as they might concern the issuance of bonds as provided in this section, the provisions of sections three and four, article one, chapter thirteen of this code shall not apply.

W. Va. Code 11-8-17 Special levy elections; notices; election officers; conduct of election; supplies; canvass of returns; form of ballot.

The local levying body shall publish a notice, calling the election, as a Class II – O legal advertisement in compliance with the provisions of article three [§59-3-1 et seq.], chapter fifty-nine of the Code, and the publication area for such publication shall be the territory in which the election is held. Such notice shall be so published within fourteen consecutive days next preceding the election. All the provisions of the law concerning general elections shall apply so far as they are practicable, except as follows: Where a special election is held, the local levying body, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time. The local levying body, however, shall provide the election supplies necessary for such election and shall canvass the returns thereof. A separate ballot shall be used at the levy election held in connection with any other election. The ballot shall be entitles: "Special election to authorize additional levies for the year(s)… … … … … and for the purpose of … … … … according to the order of the … … … … … … … entered on the … … … … day of … … … … ."
The additional levy shall be on Class I property … … … … cents; on Class II property … … … … cents; on Class III property (if any) … … … … cents; on Class IV property (if any) … … … … cents.

W. Va. Code §11-8-25 Funds expended only for purposes for which raised.

Except as otherwise provided in this article, boards or officers expending funds derived from the levying of taxes shall expend the funds only for the purposes for which they were raised.

ACCOUNTING FOR SPECIAL EXCESS LEVIES

ACCOUNTING FOR COUNTY SPECIAL EXCESS LEVIES

(This section specifically speaks to county governments; however, generally the same practices should be adhered to by municipalities and school boards)

W. Va. Code § 11-18-16 authorizes a county commission to lay an excess levy after conducting an election on this subject. The duties of accounting for these levies belong to the county commission with the county clerk doing the actual bookkeeping. Below are the duties of each of the elected officials and the recommended procedures to carry out these duties.

County Commission:

The county commission may provide for an election to increase levies by entering an order in their official order book. The order must contain the following basic information:

1. The purpose for which the additional funds are needed;
2. The amount for each purpose;
3. The total amount during the term of the levy
4. The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;
5. The proposed additional rate of levy in cents per $100 of assessed valuation on each class of property;
6. The proposed number of years for which the additional rate of levy shall apply, not to exceed five years;
7. The fact that the county commission will or will not issue bonds, as provided by this section, upon approval of the proposed levy.

Please note, that the Local Government Services Division of the State Auditor's Office provides a service in which the entity may submit a proposed election order and ballot for review and assistance prior to adoption. Often this review allows the levying body to avoid potential problems

The county commission shall submit to the voters the question of the additional levy at either a general or special election. If at least sixty percent of the voters cast their ballots for the additional levy, the

county commission shall impose the additional levy. The county commission, upon approval of the increased levy may immediately issue bonds in an amount not to exceed the amount of the increased levy plus interest and not to exceed the term of the increased levy.

The county commission shall instruct the county clerk to publish a notice calling for the election. This notice must be a class II-O legal advertisement in compliance with W. Va. Code § 59-3-1 et seq. The notice shall be published within fourteen consecutive days next preceding the election.

The county commission has the duty to decide how this levy is to be reflected in the financial statements. It is recommended that a special fund be created under W. Va. Code § 7-1-9 to account for the levy. The county commission should enter an order in their official order book creating this fund and stating the purposes as outlined in the levy call.

The county commission has the responsibility of clearly setting forth in the election order and ballot the purpose(s) and the amount to be raised for each identified purpose. **Please see the attached Supreme Court's 1995 decision regarding this specific area.**

The county commission has the duty to determine how the levy is distributed. The county commission should instruct the county clerk on how to make the distribution if the levy call does not define the method of distribution. The checks on the levy fund must contain the three signatures required by statute; that is the sheriff, the county clerk, and the president of the county commission. This fund would appear on the sheriff's settlement as a county special revenue fund. The county commission must disburse this fund according to the purposes set forth in the election order. Some election orders clearly state the way that these levies are to be distributed. Many levies are vague and the county commission must determine what a proper expenditure from this fund is.

The county commission has control of this fund and the distribution of the revenue collected from the levy. The commission is restricted by the election order as to the purpose for which this levy may be used.

County Clerk:

The county clerk's duties involving special levies include placing the public notice of the election, maintaining the accounting records of the special levy, and preparing the checks.

The county clerk is required to place a notice of the levy call (election order) in the local papers when instructed by the county commission. This notice is to be a Class II-O legal advertisement in compliance with W. Va. Code § 59-3-1 et seq. The publication area for such publication would be the county boundaries. The notice shall be published within fourteen consecutive days next preceding the election.

The county clerk should maintain a record of the special excess levy fund similar to the records of the county's other funds. The receipts should be posted to a cash receipts journal and the disbursements to the cash disbursements journal. The total of these receipts and disbursements are posted to a ledger. At the end of the month, a trial balance will be prepared. This fund should be published in the financial statement of the county, since it is a county fund. The ledger should be set up according to the levy call (election order) by purpose and with various entities classified under each purpose. For example, a levy may have two purposes, such as fire safety and ambulance services. These two purposes would be set up in a ledger as a classification, while each fire department and ambulance service is classified under the correct purpose.

The county clerk should prepare the check for the approval of the county commission as stated in the levy call (election order). The expenditures are then submitted to the county commission for approval. If a lump sum payment is made to outside agencies, the county commission must require an audit of those funds from the outside agency. **(See Attorney General's Opinions dated April 3, 1968 and March 18, 1980. These Opinions are included in this guideline.)**

Generally, the election laws for a regular election apply for a special election where practicable except for the following: Where a special election is held, the county commission having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct the election, but cannot appoint less than three commissioners and two clerks. Election officials shall be the same as appointed to serve in the general election if held at the same time. A separate ballot shall be used at a levy election held in connection with any other election.

Sheriff:

The sheriff's duties regarding excess levies include collection of the levies and maintaining the records as required by statute. Taxes collected on excess levies that are tied to the county commission are reported on the settlement as special revenue funds under the governmental fund type. Taxes collected on excess levies that are tied to the municipal corporation or the school board are reported on the settlement as agency funds under the fiduciary fund type.

Excess levies are collected with regular taxes; the sheriff should distribute these taxes on a monthly basis to the various taxing units and special revenue funds involved. The sheriff will each month provide to the county commission the amount of taxes collected and a complete breakdown of the revenues credited to this fund.

The sheriff's office is required to account for the balance, reconcile the disbursements and provide an accurate accounting of the collections for this fund. The sheriff does not have the authority to make a distribution of this fund directly to various entities such as fire departments, libraries, ambulance authorities, etc., but is required to make a distribution to the county commission's special revenue fund.

The county commission may instruct the sheriff to invest any excess balance in this account. The interest earned will be credited to this fund to be used for the purpose outlined in the county commission's election order calling for the special excess levy.

SAMPLE

PREPARING THE EXCESS LEVY

CERTIFICATE OF VALUATION

WORKSHEET FOR CALCULATING LEVY RATE

ELECTION ORDER/NOTICE OF ELECTION

SAMPLE BALLOT

NOTE:

Reduce Rate Provision: Note that the SAMPLE includes a provision to reduce the levy rate if there is an increase in assessed value. Property reappraisal generated a concern from many community leaders and taxpayers that the special excess levies would generate a surplus or a "windfall" of additional revenue because the levy rate is fixed by the rate stated in the order. In an effort to address this concern, 5a is presented in the sample as an alternative to establishing a fixed levy rate. This provision is not dictated under W. Va. Code § 11-8-16 and 17. **The provision is optional and may be included at the discretion of the levying body.**

CERTIFICATE OF VALUATION

To: KATELYN N. PRIESTLY, PRESIDENT OF THE COUNTY COMMISSION
MAGNOLIA COUNTY

The undersigned Assessor and County Clerk of said County do hereby certify the assessed value of the various classes of real estate, personal property and public utility property for the assessment year 2003.

	Column A Total Assessed Value Includes Back Tax New Property & Incremental Value	Column B All Other Exempt Value	Column C Gross Assessed (Col A Plus Col B)	Column D Homestead Exempt Value	Column E Assessed Value Tax Purposes
Class I					
Personal Property	30,529,122		30,529,122		30,529,122
Public Utility	3,550,700		3,550,700		3,550,700
Total Class I	34,079,822		34,079,822		34,079,822
Class 2					
Real Estate	261,372,548	1,259,180	262,631,728	24,507,339	236,865,209
Personal Property	5,447,835		5,447,835		5,447,835
Total Class 2	266,820,383	1,259,180	268,079,563	24,507,339	242,313,044
Class 3					
Real Estate	71,054,764	1,500,000	72,554,764		71,054,764
Personal Property	158,855,437	734,558	159,589,995		158,855,437
Public Utility	95,639,800		95,639,800		95,639,800
Total Class 3	325,550,001	2,234,558	327,784,559		325,550,001
Class 4					
Real Estate	34,469,805	7,143,649	41,613,454		34,469,805
Personal Property	51,825,756		51,825,756		51,825,756
Public Utility	18,199,600		18,199,600		18,199,600
Total Class 4	104,495,161	7,143,649	111,638,810		104,495,161
Total For Levying Body	730,945,367	10,637,387	741,582,754	24,507,339	706,438,028

Given under our hands this 3rd day of March, 2003

Heaven L. Holley — County Clerk

Patrick D. Mason — Assessor

The above certificate must be in the hands of the levying body no later than March 3. (W. Va. Code § 11-3-6) The Assessor is required to certify the valuation of real estate and personal property and the County Clerk is required to certify the value of public utility as assessed by the Board of Public Works. To avoid confusion this joint certificate is used.

WORKSHEET
CALCULATION OF THE LEVY RATE

TAXABLE ASSESSED VALUATION (Column E on Certificate of Value)		X	WEIGHTING	=	**WEIGHTED ASSESSED VALUE**
Total Class I	$ 34,079,822	X	.01	=	$ 340,798
Total Class II	242,313,044	X	.02	=	4,846,261
Total Class III	325,550,001	X	.04	=	13,022,000
Total Class IV	104,495,161	X	.04	=	4,179,806
Total All Classes	**$ 706,438,028**		**(Total WAV)**		**$ 22,388,866**

Annual amount to be raised by the special excess levy $ 542,060

is divided by the **TOTAL WEIGHTED ASSESSED VALUE (Total WAV)** $ 22,388,866

The result of this division is then multiplied X 100 .0242
(use 4 decimal places here)

and this will = the Class I Levy Rate in cents per 2.42 ¢
$100 of assessed valuation **(use 2 decimal places here)**

The Class II, III, and IV Levy Rates are determined by multiplying the Class 1 Rate as follows:

Class I Rate 2.42 ¢ X 2 = Class II Rate 4.84 ¢

Class I Rate 2.42 ¢ X 4 = Classes III & IV Rate 9.68 ¢

NOTE: Do Not Use Rates In Excess of 2 Decimal Points

ORDER AND NOTICE OF SPECIAL ELECTION FOR AN ADDITIONAL COUNTY COMMISSION LEVY TO THE VOTERS OF MAGNOLIA COUNTY

That at a **regular** meeting of the **County Commission** of the **County of Magnolia**, State of West Virginia, held on the **1st day** of **October, 2003**, as provided by law, the following order was made and entered of record, to wit:

The **County Commission** of **Magnolia County** being of the opinion that the maximum levies for current expenses authorized by Article 8, Chapter 11, of the Code of West Virginia, as amended, will not provide sufficient funds for the payment of current expenses of **Magnolia County**, including expenditures for the purpose or purposes hereinafter set forth, and that an election should be held to increase such levies under the provisions of Section 16, Article 8, Chapter 11 of the Code, as amended, it is hereby ordered:

1. That the purpose for which additional funds are needed are: **A. Ambulance; B. Volunteer Fire Department; C. Senior Center.**

2. That the approximate annual amount for each purpose after a **7% percent** allowance for tax discounts, delinquencies, exonerations and uncollectible taxes is**: A. $325,000; B. $158,000; and C. $20,460 or a total annual amount of $503,460.**

3. That the total approximate amount for said purpose during the term of the levy is: **A. $1,625,000; B. $790,000; and C. $102,300 or a Grand Total of $2,517,300**

4. That the separate and aggregate assessed valuation of each class of taxable property within the **County** is:

Class I	$ 34,079,822
Class II	$ 242,313,044
Class III	$ 325,550,001
Class IV	$ 104,495,161
Total	$ 706,438,028

5. That the proposed additional rate of levy in cents per one hundred dollars of assessed valuation on each class of property is:

Class I	2.42 cents
Class II	4.84 cents
Class III	9.68 cents
Class IV	9.68 cents

5a That in the event the separate and aggregate assessed value of each class of taxable property within the **County increases during the term of the special excess levy, the levy rate shall be reduced so that the projected tax collection will not exceed **$ 503,460** in any fiscal year.

6. That the proposed years to which the additional levy shall apply are the fiscal years beginning **July 1, 2004, July 2, 2005, July 1, 2006, July 1, 2007 and July 1, 2008.**

7. That the **County Commission** will not issue bonds upon approval of the proposed levy.

8. That the question of such additional levy shall be submitted to a vote at a **special election** to be held on the **10th** day of **January**, **2004.**

9. That notice calling such election shall be given by the publication of this Order at least once each week for two successive weeks next preceding said election in two newspapers of opposite politics and of general circulation in the territory in which the election is held. If there is only one newspaper published in the county, said publication shall be made therein. All the provisions of the law concerning general elections shall apply so far as they are practicable.

10. That the ballot to be used at such election shall be in the following form:

MAGNOLIA COUNTY COMMISSION

SPECIAL ELECTION TO AUTHORIZE ADDITIONAL LEVIES

(January 10, 2004)

A special election to authorize additional levies for the fiscal years beginning **July 1, 2004, July 1, 2005, July 1, 2006, July 1, 2007, and July 1, 2008** for **A. Ambulance Service in the amount of $325,000 annually and $1,625,000 during the term of the levy; B. Volunteer Fire Department in the amount of $158,000 annually and $790,000 during the term of the levy; and C. Senior Center in the amount of $20,460 annually and $102,300 during the term of the levy;** according to the Order of the **County Commission** entered on the **1st** day of **October, 2003**.

That the additional rate of levy in cents per one hundred dollars of assessed valuation on each class of property shall be:

Class I	2.42 cents
Class II	4.84 cents
Class III	9.68 cents
Class IV	9.68 cents

In the event the separate and aggregate assessed value of each class of taxable property within the **County** increases during the term of the special excess levy, the levy rate shall be reduced so that the projected tax collection will not exceed **$504,060** in any fiscal year.

( ) For the Levies

( ) Against the Levies

Magnolia County Commission

By: Katelyn N. Priestly

Commission President

ATTEST:

Heaven L. Holley

County Clerk

FORMS
FILL IN THE BLANK

ELECTION ORDER/NOTICE OF ELECTION

SAMPLE BALLOT

WORKSHEET FOR CALCULATING LEVY RATE

NOTE:

This election Order is only applicable to an additional levy. Item 7 is included only for the purpose of showing that the levying body has no intent of combining an additional levy with a bond issue. In the event the entity desires to combine an additional levy with a bond issue under the provisions of W. Va. Code § 11-8-16**, the Attorney General's Office should first be consulted before proceeding.**

Reduce Rate Provision: Note that the FORMS include a provision to reduce the levy rate if there is an increase in assessed value. Property reappraisal generated a concern from many community leaders and taxpayers that the special excess levies would generate a surplus or a "windfall" of additional revenue because the levy rate is fixed by the rate stated in the order. In an effort to address this concern, 5a is presented in the sample as an alternative to establishing a fixed levy rate. This provision is not dictated under W. Va. Code § 11-8-16 and 17. **The provision is optional and may be included at the discretion of the levying body.**

ORDER AND NOTICE OF SPECIAL ELECTION FOR AN ADDITIONAL (MUNICIPAL/COUNTY/ OR SCHOOL) LEVY TO THE VOTERS OF (MUNICIPALITY OR COUNTY)

That at a **(regular or special)** meeting of the **(Municipal Council, County Commission or School Board)** of the **(Municipality of or County of)**, State of West Virginia, held on the **(day)** of **(month)**, **(year)**, as provided by law, the following order was made and entered of record, to wit:

The **(Municipal Council, County Commission, or School Board)** of **(Municipality or County)** being of the opinion that the maximum levies for current expenses authorized by Article 8, Chapter 11, of the Code of West Virginia, as amended, will not provide sufficient funds for the payment of current expenses of **(Municipality, County or School Board)**, including expenditures for the purpose or purposes hereinafter set forth, and that an election should be held to increase such levies under the provisions of Section 16, Article 8, Chapter 11 of the Code, as amended, it is hereby ordered:

1. That the purpose or purposes for which additional funds are need is:

2. That the approximate annual amount for each purpose after a **(% percent or $ dollar amount)** allowance for tax discounts, delinquencies, exonerations and uncollectible taxes is:

3. That the total approximate amount for said purpose or purposes during the term of the levy is:

4. That the separate and aggregate assessed valuation of each class of taxable property within the **(Municipality or County)** is:

Class I	$_____
Class II	$_____
Class III *if any	$_____
Class IV	$_____
Total	$ _____

5. That the proposed additional rate of levy in cents per one hundred dollars of assessed valuation on each class of property is:

Class I	_____ cents
Class II	_____ cents
Class III *if any	_____ cents
Class IV	_____ cents

5a That in the event the separate and aggregate assessed value of each class of taxable property within the **(Municipality or County) increases during the term of the special excess levy, the levy rate shall be reduced so that the projected tax collection will not exceed **(Total annual $ dollar amount)** in any fiscal year.

6. That the proposed years to which the additional levy shall apply are the fiscal years beginning July 1 **(Specify the proposed number of years to which the additional levy applies, not to exceed 5 years for municipalities, county commissions and school boards.)**

7. That the **(Municipality, County Commission or School Board)** will not issue bonds upon approval of the proposed levy.

8. That the question of such additional levy shall be submitted to a vote at a **(general or special election)** to be held on the **(date)** day of **(month)**, **(year)**.

9. That notice calling such election shall be given by the publication of this Order at least once each week for two successive weeks next preceding said election in two newspapers of opposite politics and of general circulation in the territory in which the election is held. If there is only one newspaper published in the municipality/county, said publication shall be made therein. All the provisions of the law concerning general elections shall apply so far as they are practicable.

10. That the ballot to be used at such election shall be in the following form:

(Municipality, County Commission or School Board)

SPECIAL ELECTION TO AUTHORIZE ADDITIONAL LEVIES

(Date of Election –Month, Day & Year)

A special election to authorize additional levies for the fiscal years beginning July 1, **(Specify the proposed number of years to which the additional levy applies, not to exceed 5 years for municipalities, county commissions and school boards.)** and for the purpose of **(state the purpose or purposes outlined in the election Order and the amount to be raised for each purpose)** entered according to the Order of the **(Municipal Council, County Commission or School Board)** entered on the **(date)** day of **(month**), **(year)**.

That the additional rate of levy in cents per one hundred dollars of assessed valuation on each class of property shall be:

Class I	_____ cents
Class II	_____ cents
Class III *if any	_____ cents
Class IV	_____ cents

In the event the separate and aggregate assessed value of each class of taxable property within the **(Municipality or County)** increases during the term of the special excess levy, the levy rate shall be reduced so that the projected tax collection will not exceed **(Total annual $ dollar amount)** in any fiscal year.

( ) For the Levies

( ) Against the Levies

_____

Council, County Commission or School Board

By: _____

Mayor, Commission President, or Superintendent

ATTEST:

_____

(Recorder, Clerk, Secretary)

WORKSHEET
CALCULATION OF THE LEVY RATE

TAXABLE ASSESSED VALUATION (Column E on Certificate of Value)			WEIGHTING		**WEIGHTED ASSESSED VALUE**
Total Class I	_____	X	.01	=	_____
Total Class II	_____	X	.02	=	_____
Total Class III	_____	X	.04	=	_____
Total Class IV	_____	X	.04	=	_____
Total All Classes	_____	**(Total WAV)**			_____

Annual amount to be raised by the special excess levy _____

is divided by the **TOTAL WEIGHTED ASSESSED VALUE (Total WAV)** _____

The result of this division is then multiplied X 100 _____
(use 4 decimal places here)

and this will = the Class I Levy Rate in cents per 100 of assessed valuation _____ ¢
(use 2 decimal places here)

The Class II, III, and IV Levy Rates are determined by multiplying the Class 1 Rate as follows:

Class I Rate _____ ¢ X 2 = Class II Rate _____ ¢

Class I Rate _____ ¢ X 4 = Classes III & IV Rate _____ ¢

NOTE: Do Not Use Rates In Excess of 2 Decimal Points

West Virginia Supreme Court

And

Special Excess Levies

Order Issued: June 13, 1994: No. 22281 Jefferson County Board of Education v. James H. Paige, III, Cabinet Secretary/Tax Commissioner, Department of Tax and Revenue, and Ginger Bordier, Assessor for Jefferson County

This Order addresses public hearing requirements associated with the reduce rate provision of W. Va. Code 11-8-6g.

September 1995 Term: No. 22962 Joan Byrd, et al., v. The Board of Education of Mercer County

This Opinion addresses the requirement that an amount to be raised by an excess levy is to be stated for each purpose outlined in an election order.

STATE OF WEST VIRGINIA

At a regular term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 13th day of June, 1994, the following order was made and entered:

State of West Virginia ex rel. Jefferson
County Board of Education, Petitioner

vs.) No. 22281

James H. Paige, III, Cabinet Secretary/Tax
Commissioner, Department of Tax and Revenue,
and Ginger Bordier, Assessor for Jefferson
County, Respondents

The Court today handed down a prepared order Granting the writ of mandamus as moulded directing the respondent, James H. Paige, III, Cabinet Secretary/Tax Commissioner, Department of Tax and Revenue, to approve the revised excess levy rate adopted by the petitioner, the Jefferson County Board of Education, following a properly noticed public hearing to be conducted prior to July 1, 1994, such approval to be otherwise in conformance with relevant statutory requirements. It is further ordered that the respondent, Ginger Bordier, Assessor for Jefferson County, take such action as is appropriate to comply with the directive in this order and the statutory requirements noted herein.

Service of an attested copy of this order upon the respondents shall have the same force and effect as service of a formal writ.

Attest: _____

Clerk, Supreme Court of Appeals
Ancil G. Ramey

Per Curiam:

State of West Virginia ex rel.
Jefferson County Board of Education

No. 22281 vs

James H. Paige, III, Cabinet Secretary/Tax
Commissioner, Department of Tax and Revenue,
and Ginger Bordier, Assessor for Jefferson
County

In this original proceeding in mandamus the petitioner, the Jefferson County Board of Education (hereinafter board of education), seeks to compel the respondents, James H. Paige, III, the Cabinet Secretary/Tax Commissioner of the Department of Tax and Revenue and Ginger Bordier, Assessor for Jefferson County to approve and enter an excess levy rate of 19.46 cents per hundred on Class I property (hereinafter 19.46 excess rate). For reasons set forth below, we grant a writ of mandamus as moulded.

In West Virginia the property tax is used to help fund local school districts. The method of determining the rate for the general levy is found in Chapter 11 of the West Virginia Code and is subject to the limitations imposed by the West Virginia Constitution art. X, § 1. However, the taxpayers may vote to authorize an excess levy which exceeds the limitations imposed by W. Va. Const. art. X, § 1.

In November 1992 the voters of Jefferson County voted to authorize an excess levy for the public schools in that county. The voters authorized the excess levy rate of 22.95 cents per hundred on Class I property. The board of education recommended this rate to the voters after determining that it would need approximately $3,939,022.00 per year from the excess levy. Subsequently, the excess levy rate was set at 17.76 for the 1993-94 year. The 17.76 excess levy rate produced $4,292,862.00 in additional revenue.

The following year, the board of education reconsidered its excess levy rate. W. Va. Code, 11-8-6g [1993] requires a board of education to conduct a public hearing before March 20 if there is an increase of 4% or more in the total projected property tax revenues that would be realized if the special levy rates then in effect would be imposed. Pursuant to W. Va. Code, 11-8-6g [1993] the board of education held a hearing on March 21, 1994. At the March 21, 1994, hearing the board of education determined that the excess levy rate should be set at 15.59 cents per hundred upon Class I property, and continued the matter until April 19, 1994, pursuant to W. Va. Code, 11-8-12a [1993]. The 15.59 excess levy rate would realize approximately $4,723,322.00 in revenue. This excess levy rate would realize $430,460.00 more revenue for the 1994-95 year than the board of education realized during the 1993-94 year.

The excess levy rate of 15.59 was submitted to the State Tax Commissioner as required by W. Va. Code, 11-8-12 [1961]. By

letter dated April 13, 1994, the State Tax Commissioner approved the excess levy rate.

Subsequently, the board of education discovered that it had made an accounting error when it used retirement monies as discretionary funds. An approximate one million dollar shortfall resulted from this error. Therefore, at the April 29, 1994, meeting the board of education reconsidered its excess levy rate of 15.59. The board of education determined that the excess levy rate should be 19.46 which would realize $5,895,933.00 in revenue (which would realize $1,603,071.00 more in revenue than the excess levy rate realized during the 1993-94 year).

The board of education submitted the proposed excess levy rate of 19.46 to the State Tax Commissioner. The State Tax Commissioner, by letter dated May 4, 1994, advised the board of education that unless it has fulfilled the public hearing requirements provided for under W. Va. Code, 11-8-6g, it was not authorized to reverse their previous decision to lower the rate. The State Tax Commissioner then directed the Jefferson County assessor to enter the 15.59 excess levy rate.

In summary, the voters of Jefferson County authorized an excess levy rate of 22.95 in November of 1992. Subsequently, the board of education reduced the excess levy rate to 17.76 for the 1993-94 year. The board of education further reduced the excess levy rate to 15.59 for the 1994-95 year after holding a public hearing pursuant to W. Va. Code, 11-8-6g [1993]. However, after discovering its accounting error which resulted in an approximate

one million dollar shortfall, the board of education sought to increase the excess levy rate to 19.46 for the 1994-95 year. The State Tax Commissioner denied the board of education's request since the board of education had failed to hold a public hearing on the 19.46 excess levy rate. The State Tax Commissioner recognizes that the board of education had a public hearing in March for the 15.59 excess levy rate, however, the State Tax Commissioner contends that the board of education is required to have a public hearing in order to set the 19.46 excess levy rate.

We agree. As the State Tax Commissioner notes, W. Va. Code, 11-8-6g was specifically enacted to avoid windfalls from the enactment of W. Va. Code, 11-1C-1, et seq. in 1990 which authorized by the end of the three-year cycle, tax year 1994, all property in this State to be annually assessed at 60% of its then current market value. The legislature anticipated these windfalls because prior to the enactment of W. Va. Code, 11-1C-1 et seq. most property in this state was assessed at a percentage lower than 60% and was appraised at something less than current market value.

As an integral part of W. Va. Code, 11-8-6g [1993] the legislature mandates that a public hearing be held if the assessment would cause an increase of 4% or more in the projected tax revenues:

> (b) Any local levying body projected to realize such increase greater than four percent shall conduct a public hearing no later than the twentieth day of March in the years one thousand nine hundred ninety-four and on thousand nine hundred ninety-five, which hearing may be held at the same time and place as the annual budget meeting.

W. Va. Code, 11-8-6g(b) [1993], in relevant part. W. Va. Code, 11-8-6g [1993] specifically outlines how notice is to be provided. Clearly, the legislature's purpose for the public hearing requirement in W. Va. Code, 11-8-6g [1993] was to provide the public the opportunity to comment on the excess levy rate, thus, preventing the school board from taking advantage of the windfall the excess levy may realize until W. Va. Code, 11-1C-1, et seq. is fully implemented.

In the case before us, the board of education did hold a public hearing on March 21, 1994, and determined that the excess levy rate should be reduced to 15.59, which the school board may do pursuant to W. Va. Code 11-8-6g(d) [1993]. Neither party disputes that the school board fulfilled the statutory requirements up to this point. In fact, the State Tax Commissioner approved the 15.59 excess levy rate.

The problem in the case before us rose when the school board later discovered that it had made an accounting error which resulted in an approximate one million dollar shortfall. Once the school board discovered its error it sought to correct it at the April 29, 1994, board of education meeting which was held pursuant to W. Va. Code, 11-8-12a [1993] which states, in relevant part:

> Each board of education when it reconvenes on the third Tuesday in April shall proceed in a manner similar in all respects to that provided for in section ten-a [§ 11-8-10a] of this article. The board shall not finally enter any levy until it has been approved in writing by the tax commissioner. After receiving the approval, the board shall enter the statement as approved in its record of proceedings, together with the written approval [.]

W. Va. Code, 11-8-10a [1961], which the above Code section refers to, states, in pertinent part:

> The county court [county commission] shall, when it reconvenes upon the third Tuesday in April, hear and consider any objections made orally or in writing by the prosecuting attorney, by the tax commissioner or his representative, or by any taxpayer of the county, to the estimate and proposed levy or to any item thereof. The court [county commission] shall enter of record any objections so made and the reasons and grounds therefore.
>
> The failure of any officer or taxpayer to offer objections shall not preclude him from pursuing any legal remedy necessary to correct any levy made by any fiscal body under this article.
>
> The court [county commission], after hearing objections, shall reconsider the proposed original estimate and proposed rates of levy, and if the objections are well taken, shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have first been approved, in writing, by the tax commissioner.

The board of education contends that it could raise the excess levy rate from 15.59 to 19.46 to rectify its error at the April 29, 1994, meeting pursuant to W. Va. Code, 11-8-10a [1961]. However, the State Tax Commissioner correctly notes that the public hearing provision of W. Va. Code, 11-8-6g [1993] could successfully be circumvented if the statutes were construed in the manner the board of education suggests. A board of education could represent to the voters at the March public hearing that it intended to reduce the excess levy rate and save the taxpayers money only to later impose a much higher excess levy rate at the April board of education meeting without the public being appropriately noticed

as to what may occur. Moreover, W. Va. Code, 11-8-6g [1993] contains the following phrase in its introduction: "notwithstanding any other provision of law to the contrary [.]" Clearly the legislature intended for W. Va. Code, 11-8-6g [1993] to supersede any other provision in the Code in reference to this issue, including W. Va. Code, 11-8-10a [1961].

As we stated previously in this order, the purpose of W. Va. Code, 11-8-6g [1993] is to alleviate windfalls which may result from the enactment of W. Va. Code, 11-1C-1, et seq. in order to protect the taxpayer, the legislature mandated that a public hearing be held before the twentieth of March pursuant to W. Va. Code, 11-8-6g [1993] on a new rate if it will cause a 4% or more increase in the total projected property tax revenues that would be realized if the special levy rates then in effect would be imposed. The purpose of the public hearing is to give the taxpayers an opportunity to object to the new excess levy rate if they find it provides too much of a windfall. W. Va. Code, 11-8-6g [1993] is only effective until July 1, 1995. At that time W. Va. Code, 11-1C-1, et. seq. will be fully implemented and windfalls should not occur.

In the case before us, the public hearing requirements found in W. Va. Code, 11-8-6g [1993] are controlling. Therefore, the State Tax Commissioner correctly refused to approve the 19.46 excess levy rate. The State Tax Commissioner did suggest that the board of education hold a public hearing even though the March deadline found in W. Va. Code, 11-8-6g [1993] would not me met. However, the board of education refused to do so.

We find the State Tax Commissioner's suggestion to be appropriate. Therefore, if the board of education decides that the 19.46 excess levy rate should be approved it must hold a public hearing prior to July 1, 1994, and otherwise follow the requirements found in W. Va. Code 11-8-6g [1993]. The Sate Tax Commissioner is to accept the 19.46 excess levy rate if he finds that such rate is proper in all other respects. We recognize that although this procedure is not in strict compliance with W. Va. Code 11-8-6g [1993], which requires that the public hearing to be held before March twentieth, granted the serious circumstances of this case, we believe conducting another public hearing prior to the beginning of the fiscal year involved is appropriate. We further understand the consequences to the Jefferson County Board of Education if revenue adjustments are not made.

In syllabus point 2 of State ex rel. Kucera v. City of Wheeling 153 W. Va. 538, 170 S.E. 2d 367 (1969), this Court stated: "A writ of mandamus will not issue unless three elements coexist – (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Based on our discussion above, we find that the three elements listed in Kucera have been met.

It is, therefore, Adjudged and Ordered that a writ of mandamus as moulded be issued directing the State Tax Commissioner to approve the revised excess levy rate adopted by the Jefferson County Board of Education following a properly noticed public hearing to be conducted prior to July 1, 1994, and

that is otherwise in conformance with relevant statutory requirements. Additionally, it is Adjudged and Ordered that a writ of mandamus as moulded be issued directing the Assessor for Jefferson County to take such action as is appropriate to comply with the directives in this order and the statutory requirements noted herein.

It is further ordered that service of an attested copy of this order upon the respondents shall have the same force and effect as service of a formal writ.

September 1995 Term

No. << 22962>>

JOAN BYRD, ET AL.,
Petitioners Below, Appellees,

v.

"THE BOARD OF EDUCATION OF MERCER COUNTY"
AKA SCHOOL BOARD OF MERCER COUNTY,
Respondent Below, Appellant

Appeal from the Circuit Court of Mercer County
Honorable Robert A. Burnside, Jr., Circuit Judge
Civil Action No. 95-CV-278-K

REVERSED

Submitted: September 12, 1995
Filed: December 13, 1995

Kimber Ratcliffe Warner
Princeton, West Virginia
Attorney for the Appellees

Kathryn R. Bayless
Bayless, McFadden & Cyrus
Princeton, West Virginia
Attorney for Mercer County Board of Education

Howard E. Seufer, Jr.
Bowles Rice McDavid Graff & Love
Parkersburg, West Virginia
Attorney for Amici Curiae

JUSTICE WORKMAN delivered the Opinion of the Court.
RETIRED JUSTICE MILLER sitting by temporary assignment.
JUSTICE ALBRIGHT did not participate.

SYLLABUS

1. "The true interpretation of the language of a special levy proposal is the meaning given to it by the voters of the county, who, by their approval of the special levy, consent to be taxed more heavily to provide the necessary funds." Syl. Pt. 1, Thomas v. Board of Educ., 164 W. Va. 84, 261 S.E.2d 66 (1979).

2. "Funds derived from a special levy may be expended only for the purpose for which they are approved. W. Va. Code §§ 11-8-25[, 11-8]-26." Syl. Pt. 2, Thomas v. Board of Educ., 164 W. Va. 84, 261 S.E.2d 66 (1979).

3. "Generally the words of a statute are to be given their ordinary and familiar significance and meaning, and regard is to be had for their general and proper use." Syl. Pt. 4, State v. General Daniel Morgan Post No. 548, V.F.W., 144 W. Va. 137, 107 S.E.2d 353 (1959).

4. Because the requirement of West Virginia Code § 11-8-16 (1995) that a purpose be set forth in an election order for the levy of additional taxes is couched in very general language, a general statement of purpose meets the statutory requirement. However, once specific purposes are enunciated, corresponding amounts for each purpose must be stated.

Workman, Justice:

The Mercer County Board of Education ("Board") appeals from the June 15, 1995, order of the Circuit Court of Mercer County finding a special levy approved by Mercer County voters to be invalid. Appellees, a group of Mercer County residents, challenged the levy through a writ of supersedeas for failure to delineate specific dollar amounts for each stated purpose on the levy ballot. After due consideration of this issue, we conclude that the circuit court's ruling was incorrect.

On August 23, 1994, the Board approved a levy call for continuance of the excess school levy for the period of July 1, 1995, through June 30, 2000. The ballot containing the excess levy proposal was approved by the Mercer County voters on November 8, 1994. The election results--6,711 voters in favor and 5,008 opposed--were certified on November 30, 1994,

by the county commission sitting as a board of canvassers. See W. Va. Code § 11-8- 17(1995); Park v. Landfried, 135 W. Va. 361, 63 S.E.2d 586 (1951) (stating that votes cast in special election called by local board of education should be canvassed by county commission).

A copy of the board of canvassers' certificate of votes cast was forwarded by the Board to the West Virginia Department of Tax and Revenue ("Tax Department"). On March 22, 1995, the Board proposed the levy rates and recorded the details of the proposed levy rates for fiscal year 1995-96 in its minutes. Pursuant to statutory requirements, the levy rates were then published in the Bluefield Daily Telegraph. See W. Va. Code § 11-8-12 (1995). By letter dated April 5, 1995, the Tax Department notified the Board that the state tax commissioner ("Commissioner") had approved the Board's schedule of proposed levy rates for the fiscal year beginning July 1, 1995. See footnote 1 The Commissioner concluded that "any levy rates to be imposed in excess of those prescribed by the West Virginia Constitution were legally authorized by a vote of the people."

On April 18, 1995, the Board laid the levy and entered the levy order reflecting the adoption of the rates previously proposed and published in its records. As required by West Virginia Code § 11-8-13 (1995), the levy order was forwarded to the Commissioner and the Mercer County Superintendent of Schools. Absent the intervening ruling by the circuit court, the levy rates approved by the voters would have taken effect on July 1, 1995.

Approximately one week prior to the November 1994 special levy election, some of the Appellees voiced objection to the county commission and to prosecuting attorney, Charles R. Smith, regarding the form of the ballot. The specific objection concerned the fact that the levy order listed eleven separate purposes for which additional funds were needed, divided into two categories--"a." and "b."--with no corresponding dollar amounts designated for each purpose for which the funds were sought. The pertinent ballot language was as follows:

Special Election to authorize additional levies for the fiscal years beginning July 1, 1995; ... and the approximate amounts necessary for each purpose are set forth as follows, . . .

A. (1) For continuing the upgrading and improving of the instructional program of the Mercer Count y School District by the employment and retention on of qualified teachers and substitutes

thereby keeping the Mercer Count y School District in a competitive position with other counties in West Virginia, and

(2) For continuing the maintenance of a fair and adequate salary schedule for all service and auxiliary personnel so as to retain and employ competent staff and substitutes for maintaining adequate services for the Mercer County School District, and

(3) For continuing the provision of fringe benefits such as dental and optical insurance coverage for all employees and/or their dependents, in the annual amount of approximately. . . . . $2,900,000.

B. (1) For providing free textbooks in grades kindergarten through 12, inclusive, and

(2) For providing necessary instructional supplies, materials and equipment to all schools, and

(3) For continuing support of public libraries, health services for students and employees, 4-H activities, and

(4) For continuing support of extracurricular activities for students including chorus, instrumental music, clubs, athletics, cheerleading, and classroom field trips, and

(5) For maintaining and renovating existing school facilities, school building construction and,

(6) For assisting in meeting fire marshal requirements, and

(7) For assisting in meeting utility and operational costs, including insurance, in all buildings and

(8) For assisting in meeting the cost of transporting students to and from school, in the annual amount of approximately $3,251,320.

That the annual total approximate amount necessary to carry out the above purposes, after making due allowances for exonerations and delinquencies, is approximately $6,151,320.

That the total approximate amount necessary to carry out the above purposes, during the term of the five (5) year levy, after making due allowances for exonerations and delinquencies, is approximately $30,756,600.

The prosecuting attorney communicated to the county commission his opinion that the form of the ballot conformed with the statutory requirements for an excess school levy. Based on the opinion rendered by the prosecuting attorney, the county commission approved the form of the ballot.

Appellees initiated the underlying action on May 18, 1995, See footnote 2 seeking to have the special levy declared "null and void" through a writ of supersedeas. The parties submitted a joint stipulation of facts and briefs, but no testimonial evidence was proffered. In its memorandum of June 14, 1995, which is incorporated by reference in the court's order of same date, the circuit court concluded that the levy order and levy ballot "were not in the form and substance required by W. Va. Code 11-8-16 because the Order and Ballot failed to state the amount of levy proceeds to be applied to each identified purpose." The Board appeals the conclusion reached by the circuit court.

* * *

This case of first impression presents a question regarding what information is required to be stated in an order providing for a special election to increase levies pursuant to the language of West Virginia Code § 11-8-16 (1995) and subsequently, on the election ballot itself. See footnote 3 West Virginia Code § 11-8-16 provides, in pertinent part:

> A local levying body may provide for an election to increase the levies, by
> entering on its record of proceedings an order setting forth:
> (1) The purpose for which additional funds are needed;
> (2) The amount for each purpose;
> (3) The total amount needed;
> (4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;
> (5) The proposed additional rate of levy in cents on each class of property;
> (6) The proposed number of years, not to exceed three, to which the additional levy applies, except that in the case of county boards of education the proposed number of years shall not exceed five;

(7) The fact that the local levying body will or will not issue bonds. . .

Id. (emphasis supplied).

The Board's position is that only two purposes are stated on the election order. Those purposes are separately designated by the denotation "a." and "b." According to the Board, "a." refers to personnel expenses and "b." to non-personnel expenses. See footnote 4 Because a corresponding total dollar figure was provided for each of the two purposes, the Board maintains that the requirements of West Virginia Code § 11-8-16 were met. Recognizing that "[t]he true interpretation of the language of a special levy proposal is the meaning given to it by the voters of the county, who, by their approval of the special levy, consent to be taxed more heavily to provide the necessary funds[,]" Syl. Pt. 1, Thomas v. Board of Educ., 164 W. Va. 84, 261 S.E.2d 66 (1979), the Board cites the taxpayers' approval of the levy as evidence that the voters understood the purposes of the levy and agreed to be taxed in excess of what is required by law in order to effectuate those purposes.

Appellees challenge the Board's failure to state an amount for each of the eleven purposes See footnote 5 they identify within the election order. See footnote 6 Maintaining that the requirement of West Virginia Code § 11-8-16 concerning the statement of an amount for each purpose is clear and without ambiguity, Appellees contend that the issue in need of resolution is whether "the funds from the excess levy were to be used for eleven (11) or two (2) ends, intentions, aims, objects, plans or projects." Appellees conclude that the disparate items listed under the heading "b." could not even arguably be viewed as constituting only one purpose, and, accordingly the Board failed to comply with the statutory requirement of providing an expenses figure for each stated purpose.

Like the circuit court, we first review our decisions involving special levies. In Jarrell v. Board of Education, 131 W. Va. 702, 50 S.E.2d 442 (1948), we considered whether a board of education could complete only a portion of the multiple building projects that had been authorized by two separate levy elections. We held in Jarrell, that

[t]he expenditure of the funds for the completion of the projects so selected, to the exclusion of the other unfinished specified projects, would constitute an unlawful diversion of the funds from the purposes for which

they were authorized by the voters and will be prohibited in a proceeding instituted by a taxpayer of the county to prevent such proposed action of the board.

Id. at 702, 50 S.E.2d at 442, Syllabus, in part. The holding of Jarrell is predicated on the following precepts concerning levies:

'There is no power or authority in the county court or any other tribunal to apply a fund to a purpose other than that for which it was ordained and created by a vote of the people. As to the application of such a fund the will of the electors is supreme. Without their consent no debt can be imposed upon them, no liability assumed and no money raised or appropriated by the county tax levying bodies beyond the limitation prescribed by law. . . [W]hen he [the taxpayer] has consented to be taxed . . . the fund, when raised, can not be appropriated and expended otherwise than as ordained by him . . . .'

Id. at 708, 50 S.E.2d at 445 (quoting Harner v. Monongalia County Court, 80 W. Va. 626, 631, 92 S.E. 781, 784 (1917))(emphasis supplied).

These principles were reiterated in Thomas v. Board of Education, 164 W. Va. 84, 261 S.E.2d 66 (1979), where we considered whether excess levy funds authorized for salary supplements for teaching and non-teaching personnel had to be used for the approved purpose or whether the levy funds could be used to help meet financial needs created by implementation of a minimum pay scale. We held that [a]s the purpose of the levy which the voters approved at the polls was to provide a supplement to the state minimum salary, there is no question that the levy funds were required to be spent for that purpose. Funds derived from a special levy may be expended only for the purpose for which they are approved. W. Va. Code § 11-8-25. Any expenditure of levy funds in an unauthorized manner or for an unauthorized purpose constitutes an unlawful diversion of funds. W. Va. Code § 11- 8-26; Jarrell v. Board of Education, . . .

164 W. Va. at 90, 261 S.E.2d at 70, and Syl. Pt. 2. We further recognized: "The general rule is that the purpose for which funds were raised at a special election levy is determined by the proposal approved by the voters at the polls." 164 W. Va. at 88, 261 S.E.2d at 69; see also Charleston Transit Co. v. Condry, 140 W. Va. 651, 659, 86 S.E.2d 391, 396 (1955) (discussing constitutional amendment approval and noting "The people make them [constitutions][,] the people adopt them, the people must be supposed to read them, with the help of common-sense. . . ." (quoting 1

Story on the Constitution, 5th ed., Sec. 451)); Larkin v. Gronna, 285 N.W. 59, 63 (N.D. 1939) ("The people are presumed to know what they want, to have understood the proposition submitted to them in all of its implications, and by their approval vote to have determined that this amendment is for the public good and expresses the free opinion of a sovereign people.") .

The final case considered by the circuit court was Bane v. Board of Education, 178 W. Va. 749, 364 S.E.2d 540 (1987), a case which involved the issue of whether a local board of education had discretion to allocate special levy funds approved for salary supplements. We permitted the discretionary allocation of salary supplements in Bane because [u]nlike the special levy in Thomas, the language of the special levies in the present case did not require the county board of education to pay a specific salary supplement in a fixed amount to each of the service personnel employed by the board. Instead, the special levies here required the special levy funds in the aggregate to be used as salary supplements and to extend services. The language of the special levies here delegated to the Board the discretion as to the manner in which it would allocate the salary supplements and extended services among the service personnel. All of the special levy funds in the present case were expended for the purposes for which they were authorized by the voters.

178 W. Va. at 753-54, 364 S.E.2d at 544-45 (emphasis supplied).

In the instant case, the circuit court concluded that the Board's failure to designate separate expense figures for each of the enumerated purposes was an attempt to circumvent the requirement recognized in Jarrell that "fund[s], when raised, cannot be appropriated and expended otherwise than as ordained by . . . [the taxpayer]." 131 W. Va. at 708, 50 S.E.2d at 445 (quoting Harner, 80 W. Va. at 631, 92 S.E.2d at 784). Declaring the Board's designation of the purposes listed on the election order as either "personnel" or "non- personnel" to be "sophistry," the lower court determined that the Board could not defeat the principles articulated in Jarrell "by combining disparate expenditures into two broad groups." The circuit court concluded that the election order and the ballot were not in compliance with the requirements of West Virginia Code § 11-8-16 because they "failed to state the amount of levy proceeds to be applied to each identified purpose."

* * *

Given that none of this Court's prior decisions are dispositive of the issue before us, our analysis must continue with the statute itself. West Virginia Code § 11-8-16 requires that "(1) [t]he purpose for which additional funds are needed[]" and "(2) [t]he amount for each purpose[]" be set forth in the election order providing for a special levy election. According to the parties, the crux of the dispute between the parties centers on the meaning of the term "purpose." See footnote 7 The Board argues that the term "purpose" as used in West Virginia Code § 11-8-16 should be defined consistent with the "every-day, ordinary meaning" attributed to such term. With little further explanation, the Board maintains that it complied with the statutory requirements of identifying the levy's purposes and the expenses associated with achieving such purposes by designating personnel items under the subheading "a." and non-personnel items under the subheading "b." on the election order. The Board contends that Appellees "place[] a strained interpretation upon the word 'purpose' by asserting that there were 'eleven separate purposes for which additional funds were needed, divided into two categories.'" Conversely, Appellees conclude that because a purpose is commonly viewed as "something set up as an object or end to be attained," the election order at issue contained eleven, rather than two, purposes. Webster's Ninth New Collegiate Dictionary 957 (1983).

"Generally the words of a statute are to be given their ordinary and familiar significance and meaning, and regard is to be had for their general and proper use." Syl. Pt. 4, State v. General Daniel Morgan Post 548 , V.F.W., 144 W. Va. 137, 107 S.E.2d 353 (1959). More recently, we stated, "[g]enerally, words are given their common usage." State ex rel. Frazier v. Meadows, 193 W. Va. 20, ___, 454 S.E.2d 65, 68 (1994). Applying these rules of statutory interpretation to the case sub judice, we determine that in the absence of further legislative definition, the term "purpose" must be accorded its common meaning. Accordingly, the term "purpose" within West Virginia Code § 11-8-16 must be viewed consistent with ordinary usage--that is, "an object or end to be attained." Our resolution regarding how the term "purpose" should be defined, however, does not settle this matter, as we have no further illumination by the legislature with regard to the degree of specificity intended by the statute. In the absence of such legislative edification, it appears that the statute does not preclude the listing of such purpose(s) in very general terms. See W. Va. Code § 11-8-16. Furthermore, if a board of education states the purpose of a special levy in broad general terms, then the statutory

requirement that the amount for such purpose be stated would be satisfied by a figure likewise not broken down with any greater specificity.

Thus, because the requirement of West Virginia Code § 11-8-16 that a purpose be set forth in an election order for the levy of additional taxes is couched in very general language, a general statement of purpose meets the statutory requirement. However, once specific purposes are enunciated, corresponding amounts for each purpose must be stated. Although part a. of the instant levy order contained three components, they clearly are related and could be could summarized as salary and benefits for personnel. Thus, it would appear that paragraphs (1), (2), and (3) were so closely related that the Board complied with the requirements of West Virginia Code § 11-8-16 that a purpose and amount be stated with regard to part a. However, it would be difficult to argue that the vastly disparate purposes set forth in part b. could be characterized as stating one purpose. For that reason, the Appellant did not comply with the statutory requirements of setting forth a corresponding amount for each purpose sated with regard to part b.

From the standpoint of sound public policy, our determination that a purpose may be stated broadly under the meaning of West Virginia Code § 11-8-16, is made with a certain degree of reservation. Since a taxpayer's vote in favor of a levy constitutes a "consent to be taxed" and because "[w]ithout th[is] consent no debt can be imposed . . . and no money raised[,]" it would appear that the better practice for a school board would be to offer its taxpayers a delineation of purposes in terms that are specific enough to provide the taxpayers with notice of what they are being asked to approve along with accompanying specific amounts for each purpose. Jarrell, 131 W. Va. at 708, 50 S.E.2d at 445 (quoting Harner, 80 W. Va. at 631, 92 S.E. at 784). Because taxpayers are consenting to be taxed in excess of what the law requires when they approve excess levies, providing full and complete information to them so that an informed decision can be made would seem to be good public policy. For this reason, the Court urges the Legislature to examine this issue and pass legislation setting forth with specificity the type and information which must be provided to taxpayers before they are called upon to approve an excess levy.

With regard to Appellant's call for some measure of discretion in the expenditure of special levy funds, See footnote 8 some degree of flexibility is available to boards of education through use of a "catch-all" clause, which is used by many of the thirty-nine counties currently having excess

school levies in effect. This language authorizes the local board of education to use its discretion in expending any excess funds once the objectives of the levy have been met. For example, the levy in effect for Wyoming County provides as follows:

> In the event that sufficient State, Federal, or other special funds become available to provide monies for any of the above purposes, levy monies specified for these purposes may be used for the general operation of the school system. The Board of Education is hereby authorized and empowered to expend at the end of each fiscal year, during the term of this Levy, the surplus, if any, occurring in excess of the amount needed for any of the above stated purposes for the enrichment, supplementation and advancement of all educational programs in Wyoming County, and other purposes pertinent to the operation of the schools of said county . . .

Another paradigm of this language is found in the Berkeley County levy, which provides that:

> The Board of Education of the County of Berkeley is hereby authorized and empowered to expend, during the term of this levy, the surplus, if any, accruing in excess of the amounts needed for any of the above stated purpose[s], plus excess collections due to increased assessed valuations for the enrichment, supplementation, operation, and improvement of educational services and/or facilities in the public schools of the County of Berkeley.

Such "catch-all" language properly anticipates the possibility of funds in excess of the stated needs on a levy and further authorizes the discretionary use of such excess funds consistent with those needs approved by the voters.

Our ruling in this case regarding the need for designated expenses corresponding to expressly delineated purposes is prospective in nature. We discussed the various rationales for prospective rulings in Winkler v. State School Building Authority, 189 W. Va. 748, 434 S.E.2d 420 (1993), recognizing in that case that the voiding of revenue bonds "would bring considerable financial chaos to the State." Id. at 764, 434 S.E.2d at 436; see generally Bradley v. Appalachian Power Co., 163 W. Va. 332, 349-50, 256 S.E.2d 879, 889 and Syl. Pt. 5 See footnote 9 (1979). Prospective application is clearly favored in this instance of statutory interpretation, given the disparity among the various school boards of this state with regard to the manner in which levy purposes and accompanying costs have been stated. See footnote 10 This disparity among the state's school

boards in their approach to levy specificity may have resulted from the perception that this is an area of settled law, when in fact it was merely previously unchallenged law. Furthermore, many school systems could be disastrously affected by the retroactive application of law to this previously uncharted arena. In concluding that prospective application is warranted in this case, we rely upon the involvement of substantial public issues of "vital interest" to the taxpayers and particularly, the profound effect that invalidating the levy would have on the financial well being of an entire county school system. State ex rel. Holmes v. Gainer, 191 W. Va. 686, 693, 447 S.E.2d 887, 894 (1994).

Based on the foregoing, we reverse the decision of the Circuit Court of Mercer County, but expressly limit our ruling in this case to prospective application.

Reversed.

Footnote: 1 West Virginia Code § 11-8-12a (1995) provides that: "The board [of education] shall not finally enter any levy until it has been approved in writing by the tax commissioner." Footnote: 2 The action was timely instituted pursuant to West Virginia Code § 11-8-22 (1995) which provides for a writ of supersedeas "[w]ithin forty days after an order for a levy" has been laid. Since the order was laid by the Board on April 18, 1995, and the writ of supersedeas action was filed on May 18, 1995, the Appellees were within the forty day period provided by law for challenging the levy order. Footnote: 3 West Virginia Code § 11-8-17 provides that the form of the ballot used at a levy election shall be "according to the [election] order[.]" Based on the required use of the election order format for the special election ballot, Appellees claim that the Board failed to comply with West Virginia Code § 11-8-17 by failing to delineate separate expense approximations for each of the eleven purposes that Appellees argue were included on the ballot. Essentially, Appellees contention is that by violating West Virginia Code § 11-8-16, an automatic violation of West Virginia Code §11-8-17 occurs since the latter Statute incorporates the former.

Footnote: 4 The terms "personnel" and "non-personnel" do not appear on the election order or ballot, however. Footnote: 5 Appellees calculate eleven purposes by viewing each of the separately delineated items---

three under "a." and eight under "b."---as individual purposes. Footnote: **6 Because the statute which deals specifically with the purpose requirement at issue here is West Virginia Code § 11-8-16, we will refer throughout this opinion to the requirements of the election order, rather than the ballot. Since West Virginia Code § 11-8- 17 incorporates by reference the use of the election order language required by West Virginia Code § 11-8-16 as the ballot language, any references in this opinion to the election order requirements similarly apply to the levy ballot.** Footnote: 7 Upon analysis, both parties rely upon the commonly accepted definition of the term "purpose." The actual disagreement among the parties relates to the degree of specificity required to comport with West Virginia Code § 11-8-16. Footnote: 8 In support of its position that discretion is necessary, the Board cites the fact that discounts are often offered by publishers if purchases are made in May or June rather than July, thereby offering the Board the opportunity to save tens of thousands of dollars when replacing outdated textbooks. The Board posits that "had . . . [it] specified an amount for textbooks for each year of the levy, the board would be unable to take advantage of such discounts if levy funds had already been expended for that year for other textbook items." Additionally, the Board argues that it is impossible to undertake a five-year assessment with a high degree of reliability and therefore, flexibility is "necessary to operate efficiently and responsibly." Footnote: 9 In syllabus point 5 of Bradley, we held that:

In determining whether to extend full retroactivity, the following factors are to be considered: First, the nature of the substantive issue overruled must be determined. If the issue involves a traditionally settled area of law, such as contracts or property as distinguished from torts, and the new rule was not clearly foreshadowed, then retroactivity is less justified. Second, where the overruled decision deals with procedural law rather than substantive, retroactivity ordinarily will be more readily accorded. Third, common law decisions, when overruled, may result in the overruling decision being given retroactive effect, since the substantive issue usually has a narrower impact and is likely to involve fewer parties. Fourth, where, on the other hand, substantial public issues are involved, arising from statutory or constitutional interpretations that represent a clear departure from prior precedent, prospective application will ordinarily be favored. Fifth, the more radically the new decision departs from previous substantive law, the greater the need for limiting retroactivity. Finally, this Court will also look to the precedent of other courts which have determined the retroactive/prospective question in the same area of the law in their overruling decisions.

163 W. Va. at 332-33, 256 S.E.2d at 880-81

Footnote: 10 Appellees represent in their brief that at least twenty-two of the thirty-nine counties that currently have in effect excess school levies list each purpose separately with an amount supplied for meeting such purpose. Those counties include: Berkeley, Doddridge, Greenbrier, Lewis, Lincoln, Putnam, Ritchie, Taylor, Hampshire, Logan, Jackson, Mason, Marion, McDowell, Mingo, Monongalia, Nicholas, Ohio, Wyoming, Harrison, Fayette, and Pleasants. In contrast, however, seventeen of the thirty-nine counties have levies in effect which state the respective purpose(s) in extremely vague fashion. For example, the levy in effect for Kanawha County provides:

(1) The purpose for which such additional funds are needed is the payment of the general current expenses of The Board of Education of the County of Kanawha, including, but not limited to, payment of salaries to teachers and other employees . . ., including minimum salaries fixed by law, and supplemental salaries and benefits paid by said Board; the repair, maintenance, and operation of school building, facilities, and equipment; the purchase of textbooks, library books, and instructional supplies and equipment; to provide for school buses and the transportation of pupils; and the providing of special education, health services, and career and adult education programs.

(2) The approximate amount considered necessary for said purposes in said five (5) years is the sum of $26,772.457.00 annually.

Attorney General's Opinions

And

Special Excess Levies

April 3, 1968:

96 VOLUNTEER FIRE DEPARTMENTS – County courts may aid volunteer fire fighting companies in county (not in a lump sum but) only on item-by-item disbursement order basis.

March 18, 1980:

53 PUBLIC FUNDS: The City of Fairmont may appropriate to certain public agencies and nonprofit corporations, both inside and outside corporate limits, monies from either the general revenue or revenue sharing fund in any a amount it feels will aid city residents; but it must appropriate funds to the Region VI Planning and Development Council if the request for funding is approved by a majority of counties and a majority of municipalities participating, the amount of the contribution to be based upon a proportion of population or some other fair and equitable criteria.

This opinion also addresses control over appropriations to outside agencies to insure the funds are used for public purposes; releasing funds on an item for item basis and lump sum payments; requirement of periodic audits for lump sum payments.

96. VOLUNTEER FIRE DEPARTMENTS – County courts may aid volunteer fire fighting companies in county (not is a lump sum but) only on item-by-item disbursement order basis.

April 3, 1968

HONORABLE RUSSELL C. DUNBAR
Prosecuting Attorney
Cabell County
Suite 215 – Courthouse
Huntington, West Virginia 25706

DEAR MR. DUNBAR:

Your letter requests the Attorney General's opinion upon the following questions:

> "1. Can the County Court of Cabell County allocate in its budget and pay the same to volunteer fire departments operating within the boundaries of Cabell County?
>
> "2. If the answer is yes to the above question, may the County Court pay the appropriated funds to the volunteer fire departments in lump sums, or should the disbursement of such funds be by the entry of orders by the Cabell County Court when proper invoices are presented to it?"

In an opinion rendered by the Attorney General on October 30, 1967, addressed to the Honorable Caton N. Hill, Jr., Prosecuting Attorney of Barbour County, West Virginia, the powers of county courts were described in the following language:

> "The general rule, with regard to the powers of a county court, is that a county court possesses only such power as is expressly conferred by the West Virginia Constitution or by statute, together with such power as may be reasonably and necessarily implied from the powers expressly given; in *Mohr v. County Court of Cabell County*, 145 W. Va. 377, 384, 115 S.E. 2d 806, our Court enlarged somewhat on the foregoing principle, declaring:

" ' * * * "It is well settled that a county board possesses and can exercise such powers, and such powers only, as are expressly conferred on it by the constitution or statutes of the state, or *such powers as arise by necessary implication from those expressly granted or such as are requisite to the performance of the duties which are imposed on it by law. It must necessarily possess an authority commensurate with its public trust and duties*." * * * '

"Article VIII, Section 24, of the West Virginia Constitution outlines the powers of the several county courts, as follows:

" 'The county courts, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as now is, or may be prescribed by law. They shall have jurisdiction in all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators, and the settlement of their accounts, and in all matters relating to apprentices. They shall also, *under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies.* * * *'

"Chapter 7, Article 1, Section 3, of the West Virginia Code lists the powers expressly conferred upon each county court, including the following:

"* * * 'They shall * * * have the superintendence and administration of the internal police and fiscal affairs of their counties * * * with authority to lay and disburse the county levies. * * *' "

County courts are authorized to establish, finance and maintain fire fighting facilities within their respective counties by Chapter 7, Article 1,

Section 3d, West Virginia Code of 1931, as amended, as follows:

> "The county court in any county is authorized to levy for and may erect, maintain and operate fire stations and fire prevention units and equipment therefore in the county: Provided, however, that should a county court establish a separate fire protection unit in any city in West Virginia which is now operating under the provisions of the State civil service act for paid fire departments then such new unit shall be operated in accordance with the provisions of said civil service act. *Any county court may render financial aid to any one or more public fire protection facilities in operation in the county for the general benefit of the public in the prevention of fires."* (Emphasis supplied.)

Shortly after the enactment of Code 7-1-3d, this office rendered an opinion on April 7, 1951, which concluded that Code 7-1-3d authorized the County Court of Pocahontas County to render financial aid to the Town of Marlinton in the purchase by the town of fire fighting equipment. In the April 7, 1951, opinion (see Report and Opinions of the Attorney General, 1950-52, page 150) the Town of Marlinton's fire prevention unit and equipment was considered to be a public fire protection facility in operation in the county for the general benefit of the public in the prevention of fires, within the meaning of the statute.

In the Attorney General's opinion issued on February 27, 1957 (see Report and Opinions of the Attorney General, 1956-58, page 174), the view was expressed that it was not the legislative intent to limit the scope of county court authority, provided in Code 7-1-3d, to aiding financially only a town or municipally-operated fire company, but by the use of the word "public", the Legislature intended to include every fire protection facility being operated for the protection of public property; therefore, the Jefferson County Court was authorized to provide financial assistants to the volunteer fire companies operating within that county.

Accordingly, we conclude that a county court has statutory authority to allocate in its budget public funds for use in rendering financial aid to volunteer fire companies which operate fire protection facilities within the county, for the general benefit of the public in the prevention of fires, and may disburse the same for such public purpose.

In the opinion of October 30, 1967, referred to above, this office had under consideration a somewhat similar question with reference to the legality of the payment by the County Court of Barbour County of its share of the expense of extension work under Code 19-8-1 to the extension service committee of the county in a "*lump sum*" for the coming fiscal year, rather than by the payment after presentment to the county court of the individual invoices or statements evidencing such expense or obligation by the extension service committee. In that opinion, it was said:

> "It has never been the policy of this office to approve the transfer in lump sum of public funds from a public body to an agency for disbursement by such agency *unless that agency has express statutory authority for the disbursement of such funds and adequate provision is made for audits and accounting of the funds delivered to such agency's possession.* Chapter 19, Article 8, makes no provision for a county cooperative extension service committee to receive and/or disburse funds; also, there in no provision made for the audit of such funds. Some agencies have, by statute, been specifically entrusted with the power to receive from a levying body public funds and to disburse such public funds as needed in administering its functions. Examples include local (county or municipal) boards of health (see Code 16-2A-6) and county and municipal planning commissions (see Code 8-5-15). Doubtless, there are other agencies which have been given the power to receive and disburse funds. (Emphasis supplied.)
>
> "The Attorney General has consistently been reluctant to approve the practice of transferring public funds from a public body (particularly when that body is a levying body such as a county court, board of education or municipality) to another agency for disbursement unless express authority has been given by the Legislature for such transfer and proper disbursement and post-audit controls have been established which will guarantee that expenditures are made only for the purposes intended by the Legislature."

It must be carefully noted that a county court, as a local fiscal body, is specifically forbidden to make unlawful expenditures. See Code 11-8-26, which declares:

"Except as provided in sections fourteen-b (which authorizes municipalities to impose authorized taxes and expend same as of any date), twenty-five-a (which authorizes county courts to expend surplus funds for equalization and revaluation) and twenty-six-a (which authorizes county courts and municipalities, with tax commissioner's approval, to revise their budgets) of this article, a local fiscal body shall not expend money or incur obligations:

"(1) In an unauthorized manner;

"(2) For an unauthorized purpose;

"(3) In excess of the amount allocated to the fund in the levy order;

"(4) In excess of the funds available for current expenses.

"Notwithstanding the foregoing and any other provision of law to the contrary, a local fiscal body or its duly authorized officials shall not be penalized for a casual deficit which does not exceed its approved levy estimate by more than three per cent, provided such casual deficit be satisfied in the levy estimate for the succeeding fiscal year."

Accordingly, inasmuch as Code 7-1-3d, which authorizes financial aid to be rendered by a county court to any public fire protection facility within the county (including volunteer fire departments located therein) makes no provision for such aid to be directly received and/or disbursed by such facility, and no provision made for the audit of such funds, we are of the opinion that a county court may not legally pay out its funds in a lump sum or single payment to volunteer fire departments located within the county, but must expend such budgeted funds through the payment of individual invoices when presented to the county court by the volunteer fire companies, item by item, upon the entry or proper orders therefore.

In summary, it is our considered opinion that:

1. Code 7-1-3d authorizes the State's several county courts to render financial aid to public fire protection facilities, including volunteer fire

companies, in their operation for the general benefit of the public in the prevention of fires in the respective counties; accordingly, county courts may allocate public funds for this purpose in their annual budgets and may disburse the same;

2. Generally, no local fiscal body (such as a county court, a board of education or a municipality) which levies taxes may transfer any of its public funds to another agency for disbursement, unless express authority has been given by the Legislature for such a transfer and the proper disbursement and audit controls have been established, to assure that such funds are used for authorized public purposes;

3. Inasmuch as Code 7-1-3d (which authorizes a county court to render financial aid to public fire prevention facilities) makes no provision for a direct transfer of public funds from a county court to such fire protection facilities, a county court (such as the County Court of Cabell County) may not legally expend any public funds allocated in its budget for the purpose of rendering financial aid to any volunteer fire companies operating within the county for the general benefit of the public in the prevention of fire by transferring such funds to the fire fighting company, either in a single or series or lump sum payments; instead, such public funds must be disbursed by a county court, item by item, upon the specific orders of the county court as other funds of such county court are expended after presentment to and the approval by the county court for benefit of such volunteer fire companies.

Very truly yours,

C. DONALD ROBERTSON, ATTORNEY GENERAL
By WILLIAM F. CARROLL, ASSISTANT

53. PUBLIC FUNDS: The City of Fairmont may appropriate to certain public agencies and nonprofit corporations, both inside and outside corporate limits, monies from either the general revenue or revenue sharing fund in any amount it feels will aid city residents; but it must appropriate funds to the Region VI Planning and Development Council if the request for funding is approved by a majority of counties and a majority of municipalities participating, the amount of contribution to be used based upon a proportion of population or some other fair and equitable criteria.

March 18, 1980

THE HONORABLE FRANK C. MASCARA
Prosecuting Attorney of Marion County
Marion County Courthouse
Fairmont, West Virginia 26554

Dear Mr. Mascara:

We are in receipt of your letters of October 3, 1979, and November 9, 1979, wherein you request an opinion as to whether the City of Fairmont may fund various "outside agencies" with federal revenue sharing funds. Since these outside agencies receive funding from other sources and also provide services to areas outside the limits of the City of Fairmont, you inquire as to whether there should be some limit to the amount of the appropriation such as the percentage of the agency's total budget based on the proportion of the municipal tax base or population to that of the total area served by the agency.

In our recent opinions of April 3, 1979, addressed to the Honorable David C. Hardesty, Jr., and August 31, 1979, addressed to the Honorable Edmund J. Matko, we stated that revenue sharing funds, under current federal law, could be used in the same manner as general revenue funds. Therefore, we shall examine the question of whether the City of Fairmont can appropriate general revenue funds to certain outside agencies. You list the following agencies as being outside agencies funded by the City of Fairmont:

1. Fairmont, Marion County Transit Authority
2. Marion County Public Library
3. Marion County Parks and Recreation Commission
4. Marion County Health Department
5. Marion County Humane Society, Inc.
6. Marion County Rescue Squad, Inc.
7. The Region VI Planning and Development Council
8. Marion County Youth Services Association
9. Marion County Opportunity Workshop, Inc.
10. Marion County Senior Citizens, Inc. and
11. Family Service of Marion and Harrison Counties, Inc.

We have learned that the council of the City of Fairmont refused to fund the Marion County Youth Services Association in the current fiscal year, and that organization, if it is still in existence, has not asked for an appropriation for the next fiscal year. For that reason, we shall not address the propriety of funding that organization.

Also the law permits a municipality to appropriate general revenue funds to several of the listed outside agencies. We assume that your question as to those agencies involves the propriety of using revenue sharing funds and the proportion of the agency's budget that the city may fund. Since current federal law permits the use of revenue sharing funds where general fund may be used, we shall examine those agencies which have received specific legislative approval to receive municipal funds only to determine what percentage of their budget the City of Fairmont may fund.

THE FAIRMONT, MARION COUNTY TRANSIT AUTHORITY

West Virginia Code, Chapter 8, Article 27, Section 4, of 1931, as amended, provides for the creation of an urban mass transportation authority:

> "Any municipality or county, or both, or any two or more municipalities within any county or contiguous counties, or any two or more contiguous counties, or any combination thereof, may create an urban mass transportation authority. Such authority shall be created upon the adoption, by the governing body of each participating government, acting

individually, of an appropriate ordinance or order. Each authority shall constitute a public corporation, and as such, shall have perpetual existence."

Code 8-27-11 provides that "(c)ontributions may be made to authorities from time to time by the participating governments and by any other municipalities, counties or persons that shall desire to do so. "Finally, Code 8-27-2 provides that this article is to be liberally construed in light of the legislative findings contained in that section.

It is the opinion of this office that the law allows the City of Fairmont to appropriate any sum of money that it desires to the Fairmont, Marion County Transit Authority. The Legislature appears to have felt that the City of Fairmont council is in a better position to determine the value of the transit authority to the riders and businessmen residing in the City of Fairmont. Although the city appropriation may directly or indirectly aid nonresident riders and businessmen, the appropriation is permissible nonetheless. For instance, it has long been held that a municipality may aid or create a college or university although a majority of the students may not be residents of the municipality. Grimm v. County of Rensselaer, 4 N.Y.2d416, 151 N.E. 2d 841 (1958); East Tennessee University v. Knoxville, 65 Tenn. 166 (1873).

THE MARION COUNTY PUBLIC LIBRARY

Under Code 10-1-2 a governing authority, which under Code 10-1-1 is defined to include the governing body of a municipality, is authorized to create a library or support a library. In lieu of creating or supporting a library, Code 10-1-4 permits a governing authority to contract with an existing library to provide services to its citizens.

The Marion County Public Library is a separate entity which is supported by the Marion County Commission, the City of Fairmont, and the Marion County Board of Education. There is no question that the City of Fairmont may support the Marion County Public Library. Once again, as with the transit authority, the city council is better qualified to determine the value received by the citizens of Fairmont from the library. Therefore it is the opinion of this office that the City of Fairmont may appropriate funds to the Marion County Library, and it may appropriate whatever sum that it determines to be appropriate.

THE MARION COUNTY PARKS AND RECREATION COMMISSION

The Marion County Parks and Recreation Commission is a creation of the Marion County Commission under Code 7-11-1. Under Code 10-2-3 and Code 10-2-4, the city and county may create a joint recreation system or governing body; however, we have been informed by Mr. Thomas Arnold, acting director of the Marion County Parks and Recreation Commission, that the Commission is a county organization that receives funding from the City of Fairmont.

Code 8-12-5(37) gives a municipality the power "to establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use." Code 7-11-2 gives the Parks and Recreation Commission the authority to accept gifts, grants, and donations.

Although it might have been better practice for the City of Fairmont and the Marion County Commission to have formed a joint body under West Virginia Code, Chapter 10, Article 2, we assume that the governing bodies found that the needs of their citizens could be better served by the arrangement they have created. There is certainly nothing illegal about this arrangement. Furthermore it appears that the Parks and Recreation Commission spends more money in Fairmont than the city contributes. It is the opinion of this office that the City of Fairmont may make appropriations to the Marion County Parks and Recreation Commission if it feels that such appropriations will benefit its citizens.

THE MARION COUNTY HEALTH DEPARTMENT

A review of an agreement dated the 27th day of August, 1956, between the County Court of Marion County and the City of Fairmont, finds the Marion County Health Department to actually be a combined city county health department whose correct name is the Marion County-City of Fairmont Health Department. This arrangement is authorized by Code 16-2-3.

> "Any two or more counties, or any county or counties and any one or more municipalities within or partially within the said county or counties, may combine to cooperate with the state department of health, by vote of the county commission in the case of a county and by vote of the council or other governing body in the case of a municipality,

and may participate in the employment of trained health officers and other agents and employees, or in the installation and maintenance of a common laboratory and other equipment. * * *"

It is the opinion of this office that the agreement of August 27, 1956, is legal and the City of Fairmont may continue to make contributions to the Health Department in accordance with this agreement for as long as it so desires.

MARION COUNTY HUMANE SOCIETY, INC.

The Marion County Humane Society, Inc. is a nonprofit corporation that owns an animal shelter in Marion County. Neither the City of Fairmont nor Marion County owns an animal shelter. Both city and county contract with the Humane Society to keep animals apprehended by city or county officials. The question to be determined here is whether the City of Fairmont may appropriate sums of money to the Humane Society for the purposes of maintaining an animal shelter.

Code 8-12-5(26) gives a municipality power in this area:

"To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large."

Code 19-20-8a permits a city and county to jointly carry out this task:

"The county court of any county may contract with any municipality within the county for the joint ownership, leasing, operation and maintenance within the county of a dog pound and may jointly employ a dog warden or dog wardens."

Code 19-20-6a leaves no doubt that the Marion County Commission may contract with the Humane Society to run an animal shelter.

"In addition to the powers granted to county courts by section six of this article, the county court of each county

may contract with or reimburse any private incorporated society or association with respect to the care, maintenance, control and destruction of dogs in said county."

Although there is not specific legislation which permits the city to contract with a humane society, it is the opinion of this office that the general powers of a municipality contained in Code 8-12-1 which allow a municipality to contract or be contracted with, permits the City of Fairmont to agree to appropriate funds to the Marion County Humane Society in return for the Humane Society keeping animals apprehended by city officials in the Humane Society animal shelter.

THE MARION COUNTY RESCUE SQUAD, INC.

The Marion County Rescue Squad, Inc. is a nonprofit corporation providing emergency medical service to residents of Marion County. In an opinion dated August 26, 1966, to the Honorable Robert B. Ziegler, Prosecuting Attorney of Harrison County we stated:

"In my opinion, pursuant to the authority of Code 7-1-5, the Harrison County Court may contract with the Harrison County Emergency Squad, Inc., a non-stock, non-profit corporation, to provide emergency ambulance service to the residents of Harrison County, and the City of Clarksburg, pursuant to its granted police power, may enter into such a contract." 52 Ops. Att'y Gen. 49, 54-55 [1966-1968].

Since that time, the Legislature has declared the maintenance of emergency medical service to be a matter of public interest. Code 16-4C-1 states:

"The legislature finds and declares: (1) That the safe and efficient operation of life-saving and life-preserving emergency medical service to meet the needs of citizens of this State is a matter of general public interest and concern.***"

Code 16-4D-2 further states:

"The legislature hereby finds and declares that:

* * *

"(b) The establishment and maintenance of adequate emergency medical services systems for the entire State is necessary to promote the health and welfare of the citizens and residents of this State;

"(c) By coordinating the efforts of all emergency medical service providers more efficient system of emergency medical services can be effected;

"(d) Emergency medical services is a public purpose and a responsibility of government for which public money may be spent."

For these reasons it is the opinion of this office that the City of Fairmont may appropriate monies to the Marion County Rescue Squad, Inc., in any amount that it feels will aid city residents.

THE REGION VI PLANNING AND DEVELOPMENT COUNCIL

West Virginia Code, Chapter 8, Article 25, required the governor to set up regional councils seven years ago to carry out the various planning functions set out in that article. The Region VI Planning and Development Council is one of those councils. Code 8-25-6 requires all municipalities and counties in the region to be represented in the councils:

"All municipalities and all counties within the region shall be represented on the regional council. The county representative shall be the president of the county court or a member of the county court designated by him. The municipal representative shall be the mayor or a member of the governing body designated by him. The number of the regional council by virtue of this subsection shall comprise not less than fifty-one percent of the total number of members."

Code 8-25-8(i) gives the regional council authority to:

"Apply for, accept and expend funds and grants provided for the purposes hereof by the government of the United States or its departments or agencies; by departments and agencies of the State or any other state; by one or more municipalities, counties or other political subdivisions of this

State or of any other state; or by any other agency, public or private; or from any individual whose interests are in harmony with the purposes hereof, including planning councils and commissions, all in accordance with any federal requirements and subject to any conditions or limitations of the Constitution or laws of this State."

Code 8-25-12 requires all government bodies represented on a regional council to contribute to the council a percentage of the council's budget based on a population ratio or some other fair and equitable criteria:

> "Each regional council shall adopt an annual budget, to be submitted to the participating governmental units which shall each contribute to the financing of the council according to a formula adopted by the council and approved by a majority of the counties and a majority of the municipalities participating in the regional council. All such contributions shall be fair and equitable and shall be based on the population of each participating governmental unit as determined on the basis of the latest decennial census, or such other criteria as may be determined by each respective regional council. Each participating county and municipality is hereby directed and empowered to pay over and contribute to the operation of said councils in accordance with the formula adopted as hereinbefore provided. Such sums, as are appropriated hereunder, may be transferred to the regional councils for deposit and disbursement as the regional councils may designate and direct. By such transfer, the governing body designates the regional council as its disbursing agent."

Unlike the other outside agencies funded by the City of Fairmont, the Region VI Planning and Development Council must be funded by the City of Fairmont on a formula developed by the council. The only objection the City of Fairmont can make to a request for funds would be that the request was not approved by a majority of counties and a majority of municipalities participating in the council or that the request was not based on population or some other fair and equitable criteria as required by Code 8-25-12.

THE MARION COUNTY OPPORTUNITY WORKSHOP, INC., MARION COUNTY SENIOR CITIZENS, INC., AND FAMILY SERVICE OF MARION AND HARRISON COUNTIES, INC.

These three outside agencies are nonprofit corporations who receive funding from the city, county, federal government, and United Way. The Marion County Opportunity Workshop, Inc., is principally involved in operating a work adjustment center which prepares physically and mentally handicapped persons for the job market. In addition to this training, it provides extended employment for those too handicapped to enter the job market, counseling, placement, and follow-up services.

The Marion County Senior Citizens, Inc., provides a comprehensive range of social services to persons over 55 years of age. It provides daily recreational services and health services. It also provides programs which allow many senior citizens to remain in their homes who would otherwise require institutionalization.

The Family Service of Marion and Harrison Counties, Inc., is a multifaceted organization concerned with various social problems. The City of Fairmont only contributes to one service provided by Family Service known as The Homemaker Team. The Homemaker Team visits families who have become troubled by medical problems of a physical or mental nature. For instance, the Homemaker Team helps convalescing persons temporarily unable to manage their own homes and looks after children while their mother is in the hospital or if a father is present, while he is at work. A separate set of books is maintained for The Homemaker Team, and a report is submitted to the City of Fairmont on a monthly basis.

When examining the propriety of a municipal contribution to a private nonprofit corporation one must keep in mind West Virginia Constitution, Article X, Section 6 which states:

> "The credit of the State shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person; nor shall the State ever hereinafter become a joint owner, or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever."

It has long been the law in West Virginia that the State may not give aid to, or become a stockholder of, a private corporation involved in

private pursuits. It has also long been the law that the State may not permit a municipality to give aid to, or become a stockholder in, a private corporation involved in private pursuits. *Trustees of Brooke Academy v. George, Executor, 14 W. Va. 411 (1878).*

It has been stated by the United States Supreme Court that there are certain rights in every free government that are beyond the control of the state. One of these rights is that tax money must always be used for a public purpose and never for a private purpose. *Loan Association v. Topeka, 87 U. S. 655 (20 Wall 655) (1874).*

> "We have established, we think, beyond cavil that there can be no lawful tax which is not laid for a public purpose. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense and what is not."
>
> "It is undoubtedly the duty of the legislature which imposes or authorizes municipalities to impose a tax to see that it is not to be used for purposes of private interest instead of a public use, and the courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation." Id. At 664-665.

With this in mind, Ohio courts have upheld the right of municipalities to contract with nonprofit corporations for the operation of zoological gardens because the municipality, as a public purpose, could operate the zoological gardens in its own right. *City of Cleveland v. Lausche, 49 N.E.2d207 (Ohio 1943); McGuire v. City of Cincinnati, 40 N.E.2d 435* (Ohio 1941).

It is the opinion of this office that the City of Fairmont may choose to fund or contract with a nonprofit corporation provided that the nonprofit corporation is performing a public service for residents of the City of Fairmont that could be done by the City of Fairmont in its own right. Due to the fact that the nonprofit corporation can tap charitable and other private sources of funds and can operate in a larger geographical area thereby utilizing economies of scale, the City of Fairmont is justified in funding nonprofit corporations to undertake projects that may be legally undertaken by the city itself. No service would be done to residents of the City of Fairmont or the Marion County area as a whole by stating otherwise. If the City of Fairmont would be able to provide better service to its residents by instituting its own services, we must assume that it would do so.

It is also the opinion of this office that the Marion County Opportunity Workshop, Inc., The Marion County Senior Citizens, Inc., and the Family Services of Marion and Harrison Counties, Inc. (The Homemaker Team) are performing services that would be for a public purpose if performed by the City of Fairmont. The West Virginia Supreme Court of Appeals has held that the Legislature has broad discretion in declaring what is a public purpose. *State ex rel. County Court of Marion County v. Dermus,* 148 W. Va. 398, 135 S.E.2d 352 (1964). The Legislature has given municipalities the following powers in Code 8-12-5 which means that programs exercised because of these powers are for a public purpose:

> "(44) To protect and promote the public morals, safety, health, welfare and good order;
>
> * * *
>
> "(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may deem necessary or appropriate for the public interest;
>
> * * *
>
> "(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes."

The City of Fairmont would be employing a combination of all of these powers if it were to provide the services offered by the nonprofit corporations. Therefore, it is proper for the City of Fairmont to determine that these services could be provided more efficiently by the nonprofit corporations.

In the hope of preventing any misconception, we believe it appropriate to clarify certain points before concluding. In this opinion we have stated that the City of Fairmont may legally appropriate general revenue or revenue sharing funds to various outside agencies. Except for the appropriation to the Region VI Planning and Development Council, we have not stated that the City of Fairmont is obligated to appropriate monies to these agencies.

Also, this opinion should not be construed to mean that outside agencies have a free hand in spending the funds appropriated to them by municipalities. It has always been the opinion of this office that some control must be retained over appropriation to outside agencies in order to insure that the appropriation are spent for a public purpose. See, for instance, 52 Ops. Att'y Gen. 611 [1966-1968]. Releasing funds on an item-by-item basis as described in that opinion may not be appropriate or feasible in every instance. Currently the Local Government Relations Division of the State Tax Department requires that the municipality maintain some method to determine that money is spent for a public purpose. Some municipalities are requiring the outside agency to submit itemized requests throughout the budget year in order to gain releases of their appropriation, while other municipalities find it more effective to release the appropriation in a lump sum and then conduct periodic audits to determine that the appropriation is being spent for a public purpose. While our earlier opinion disapproved of the latter method, we now feel that this method is also acceptable provided that the State Tax Department is convinced that a municipality's auditing procedures are such that the municipality will be able to determine that the money is spent for a public purpose.

Finally, in regard to federal revenue sharing monies, federal law and regulations impose certain auditing requirements and also may otherwise affect or restrict the ultimate expenditure of revenue sharing funds. The outside agencies are also responsible for compliance with the federal requirements and we make no attempt in this opinion to advise them on these matters.

Therefore for the reasons stated above, it is the opinion of this office that:

(1) The City of Fairmont may appropriate monies from the general fund or revenue sharing fund in any amount that it feels will aid residents of the City of Fairmont to the following outside agencies:

a. Fairmont, Marion County Transit Authority
b. Marion County Public Library
c. Marion County Parks and Recreation Commission
d. Marion County Health Department
e. Marion County Humane Society, Inc.
f. Marion County Rescue Squad, Inc.
g. Marion County Opportunity Workshop, Inc.
h. Marion County Senior Citizens, Inc. and
i. Family Services of Marion and Harrison Counties, Inc. (The Homemaker Team).

(2) The City of Fairmont must contribute to the Region VI Planning and Development Council provided that the request for funding is approved by a majority of counties and a majority of municipalities participating and the amount of the contribution is based on a proportion of population or some other fair and equitable criteria.

Very truly yours,

CHAUNCEY H. BROWNING, ATTORNEY GENERAL
By MICHAEL G. CLAGETT, Assistant